

A petition for rulemaking concerning Covenants, Conditions, and Restrictions ("CCRs") and other deed restrictions prohibiting the installation of amateur radio antennas

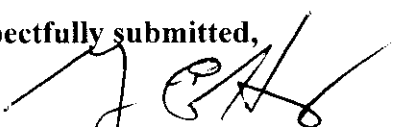
When the Commission passed PRB-1 in 1985, it declined to address the issue of CCRs and other deed restrictions prohibiting the installation of amateur radio antennas, arguing that these were contractual agreements between private parties and therefore outside the scope of the limited federal preemption.

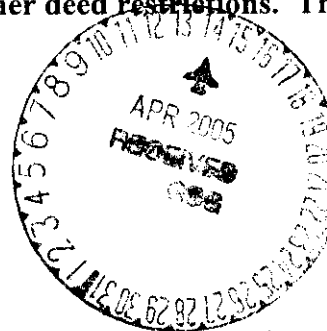
In so doing, the Commission left open a loophole by which municipalities might continue to restrict amateur radio antenna installations *indirectly*, by encouraging real estate developers to write just such CCRs and deed restrictions. The dearth of such restrictions prior to the passage of PRB-1, and the proliferation of them since, leave little doubt that municipalities have indeed embraced and taken advantage of this loophole, as there are now many areas around the country where it is virtually impossible to purchase a home without such restrictions. (In my own case, the CCRs of the development in which I live actually bear the signature and seal of the Village president – a very interesting entanglement) The amendment process for most CCRs also makes it extremely difficult, if not impossible, to have an objectionable restriction repealed, often requiring approval of 90% of the homeowners, and even approval by the municipality, another questionable entanglement.

While the Commission has declined to revisit this issue on previous occasions, the problem of CCRs has reached such a level that I believe Commission intervention is now warranted. The passage of the OTARD rule in 1996 made clear that the Commission has the authority to preempt such contractual agreements, and in light of the September 11th attacks, it must certainly be argued that the federal government's Homeland Security interest in the ability of amateur radio operators to communicate effectively at all times and under any circumstances, *alone* far outweighs any governmental interest in the ability of the public to receive commercial over-the-air broadcasts, such as OTARD covers. It is also in the *public* interest to remove these restrictions on amateur radio installations, as the public directly benefits from the ability of amateur radio operators to communicate in other disaster situations, such as the recent Florida hurricanes, when all other systems are either inoperative, crippled, or overloaded.

I therefore petition the Commission to amend PRB-1 to retroactively vacate any existing CCR or other deed restriction prohibiting, whether explicitly or implicitly, any amateur radio antenna installation, and to prohibit any future such CCRs or other deed restrictions. The closing of this loophole is long overdue.

Respectfully submitted,


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